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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELLE MARIE HOUSTON,

Defendant and Appellant.

A148013

(Sonoma County
Super. Ct. Nos. SCR673850)

Appellant Michelle Houston (appellant) appeals from a 16-month state prison sentence imposed following her plea of no contest to grand theft of an automobile (Pen. Code, § 487)¹, and her unsuccessful completion of formal probation.

Appellant's counsel has filed an opening brief in which no issues are raised, and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has declared that appellant has been notified that no issues were being raised by counsel on appeal, and that an independent review under *Wende* instead was being requested. Appellant was also advised of her right personally to file a supplemental brief raising any issues she chooses to bring to this court's attention. No supplemental brief has been filed by appellant personally.

We note that appellant has obtained a certificate of probable cause under section 1237.5 in response to her challenge to the no contest plea, contending she was coerced into accepting the plea because of her counsel's inadequate investigation. Accordingly,

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

we have reviewed the whole record pursuant to *Wende, supra*, 25 Cal.3d 436, focusing both upon the circumstances of her no contest plea, and any grounds for appeal arising after entry of the plea. Having done so, we conclude that there is no arguable issue on appeal.

Procedural and Material Factual Background of Case

A. Facts Underlying Charge²

On May 13, 2015, appellant rented a Ford van from Penske Truck Leasing (Penske) in Santa Rosa, but thereafter failed to return it the following day in accordance with her rental agreement. When appellant failed to return the van, Penske personnel made several unsuccessful attempts to contact appellant by telephone, leaving messages on her answering machine.

On May 21, 2015, a message was left warning appellant that the van she rented would be reported stolen if she did not call Penske back. Appellant called the Penske office agreeing to return the van that day, but she failed to do so.

In response, Penske sent a letter to appellant's last known address demanding the van be returned, or the police would be contacted. The next day the Santa Rosa Police Department was contacted and a request made that appellant be prosecuted for "embezzlement."

B. Procedural Background

A felony complaint was filed by the Sonoma County District Attorney's Office on November 9, 2015, charging appellant with one count of grand theft of an automobile (§ 487, subd. (d)(1)). Initially, appellant entered a plea of not guilty to the charge.

Thereafter, on February 24, 2016,³ appellant entered into a negotiated disposition by which she entered a plea of no contest to the charge in return for a grant of formal probation with "standard terms and conditions," and an agreement that she would serve

² The facts are taken from a Santa Rosa Police Department report concerning the incident which was attached to the declaration of the Sonoma County District Attorney filed in support of a warrant for appellant's arrest.

³ All further dates are in the calendar year 2016, unless otherwise indicated.

90 days in local custody. It was further agreed that the conviction subsequently would be reduced to a misdemeanor after 18 months of successful probation.

A plea form was completed, initialed and signed by appellant prior to her plea being placed on the record that same day. In signing the plea form, appellant acknowledged that no threats had been made in order to get her to change her plea and no pressure of any kind had been exerted on her to plead no contest. She also confirmed that she had sufficient time to discuss with her attorney the constitutional rights she was relinquishing by pleading no contest, any defenses to the charge she might have, and the consequences of the plea. In signing the plea form, appellant noted that she read and understood each statement in the plea form, and that she was entering the plea “freely and voluntarily.”

Appellant’s counsel also signed the plea form acknowledging that counsel had discussed with appellant the facts, consequences, and possible defenses to the charge, that there was a factual basis for the plea.

The plea was taken and entered in open court on February 24. In response to questions from the trial judge, appellant confirmed she had read the entire plea agreement and understood the trial rights she was waiving, as well as the consequences of the plea. Appellant also agreed she had enough time to discuss these rights and any defenses to the charge with her counsel, and that she was entering the plea freely and voluntarily. In accepting the plea, appellant also admitted she took the subject Ford van she had initially rented with the intent either to permanently or temporarily deprive the owner of its use. The court accepted the plea, finding it was “knowing, intelligent and voluntary.”

The court then suspended imposition of sentence and placed appellant on three years of supervised probation conditioned upon her serving 90 days in county jail (with 72 days’ custody credit), and terms and conditions as stated on the record. Among the conditions of probation were that appellant obey all laws, and that she not use or possess any controlled substances.

On March 11, the probation department requested that appellant’s probation be revoked after she was arrested for being under the influence of a controlled substance.

The trial court held a hearing on the probation violation on March 29, at which time appellant admitted to having ingested a controlled substance. The trial court revoked and then reinstated appellant's probation, with the additional condition that she enroll in and successfully complete a residential inpatient care program, after which she was to complete a six-month aftercare program. As a condition of reinstatement, appellant also agreed to waive future custody credits for her time in residential treatment.

On June 16, appellant's probation again was revoked and then reinstated following her admission to having left residential treatment without permission. Her reinstatement was subject to the additional condition that she serve 120 days in county jail, and that she report to the "Day Reporting Center" following her release. Appellant was also ordered to pay \$10,065.29 to Penske Truck Leasing in restitution.

On July 26, appellant's probation was formally revoked after she admitted that she failed to obey all laws, and to report to the Day Reporting Center. Appellant was then sentenced to the lower term of 16 months in prison to be served in county jail pursuant to section 1170, subdivision (h), with presentence credits totaling 296 days.

Conclusions Based Upon Independent Record Review

Upon our independent review of the record we conclude there are no meritorious issues to be argued, or that require further briefing on appeal.

Specifically, we also conclude there was no error in the plea disposition or in sentencing. The plea was entered voluntarily and we discern no lack of reasonable assistance by counsel. The sentence appellant received, and the restitution fines, penalties, and conditions imposed were supported by the facts and law. At all times appellant was represented by counsel.

DISPOSITION

The judgment is affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.